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नई दिल्ली, शनिवार, जुलाई 7, 1990/आषाढ़ 16, 1912

No. 16]

NEW DELHI, SATURDAY, JULY 7, 1990/ASADHA 16, 1912

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 12 जून, 1990

आ. अ. 33.—लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग
1989 की निर्वाचन अर्जी नं. 2 में उच्च न्यायालय, लखनऊ बेंच
लखनऊ के तारीख 10-4-1990 के निर्णय को एतद्वारा प्रकाशित
करता है।

(संलग्न निर्णय अंग्रेजी में छपे हैं)

ELECTION COMMISSION OF INDIA

New Delhi, the 12th June, 1990

O.N. 33.—In pursuance of Section 106 of the Re-
presentation of the People Act, 1951 (43 of 1951)
the Election Commission hereby publishes the judge-
ment dated the 10th April, 1990 of the High
Court of Judicature at Lucknow Bench, Lucknow in Elec-
tion Petition No. 2 of 1989.

1646 GI/90—1

C. M. An. No. 32(E) of 1990 I re :

Election Petition No. 2 of 1989

Ayodhya Prasad Tripathi Vs. Election Commission
and another.

Hon'ble S. Saghir Ahmad, J.

This is an application filed on behalf of respon-
dent no. 2 under Order 6 Rule 16, Order 7 Rule
11 and Section 151 of the Code of Civil Procedure
read with Sections 86 and 87 of the Representation
of People Act, 1951 for striking out Paragraphs
3 to 15 of the Election Petition and to dismiss
the election petition as not disclosing any cause of
action. The petitioner has filed a reply dated
28-3-90 supported by an affidavit of the even date
with the prayer that petitioner's application,
namely, Civil Miscellaneous Application No. 32(E)
of 1990, be rejected.

Petitioner was a candidate in the General Elec-
tions for the Lok Sabha seat from the 25-Amethi
Parliamentary Constituency.

The petitioner has set out the facts and the
grounds in the election petition on the basis of
which he seeks to challenge the election of respon-
dent no. 2 to the Lok Sabha from the aforesaid
Parliamentary Constituency.

In para 3 of the petition it has been set out that the election was held illegally as "the Parliament was not dissolved and the Ministry has not submitted her resignation to the President of India". It is further alleged that the election was tainted with undue influence of office of the Prime Minister of India and was not a free and fair election by any means.

In para 4 it is set out as under :—

- "4. That this election of Mr. Rajiv Gandhi is illegal as during the period of election he was holding an office of Union Government of India as the Prime Minister. So his election is barred by section 10 of the Representation of the People Act, 1951, as amended till todate."

The petitioner thereafter proceeds to set out in paras 5 to 14 of the petition as under :—

- "5. That Rajiv had violated code of election conduct by announcing a sum of Rs. 5000 crores Indira Mahila Yojana on 19th November, 1989 and the Chief Election Commission ignored the violation of the Code of election to conduct. A photostat copy of News paper is annexed as Annexure-2 to this election petition. On page-1 column-5 captioned as "P. M. Violates Code". Election Commission: Vide election dated 24-11-'89.
6. That Rajiv had violated Code of election conduct by using the Government Vehicles after removing Registration plates for election campaign and using the Government Buildings for campaign, as per photostat copy annexed as Annexure-3 to the present election petition.
7. That Rajiv had violated Code of election conduct by using U.P. P.W.D. in erecting ballies on the road side and making plat-form to address people, installing telephone connection by P&T as per photo-stat copy annexed as Annexure-4 to this election petition.
8. That Rajiv spent more than Rs. 1.50 lacs, viz., the stipulated limit of election expenses. As per information of news-papers 220 Jeeps earmarked for sale to Defence Department of India had been put for election campaign at Amethi P.C.
9. That there was blatant massive rigging in Amethi Parliamentary Constituency as per Indian Express, Newspaper edition dated 23-11-1989 paragraph-1 column-1, being attached herewith and marked as Annexure-5 to present election petition. Almost all eminent personalities of India demanded free and fair repoll in entire 25-Amethi Parliamentary Constituency as per Annexure-6 annexed to this petition. published in Indian Express page-4 column-3 edition of the month of November 26, 1989. However, it was denied by the Election Commission as she was scared of the defeat of Rajiv Gandhi if repoll were held, in entire Constituency.

10. That COMB (CITIZEN'S OBSERVERS AND MONITARYING BODY) Team sponsored by the Independent Initiative for Amethi had reported such abuse of election laws as per Indian Express News-paper's edition dated 24-11-89 page-7 column-2 captioned as "TEXT OF COMB REPORT" attached to this election petition and is marked as Annexure-7. However, the election commission failed to order repoll in the entire Parliamentary Constituency of 25-Amethi. The mute spectators appearing on page-4 of the Indian Express dated 25-11-89 and page-3 Sarvodaya Team Report may also be taken in the consideration.

11. That the Election Commission on the instance of the President of India, sent prob panel to Amethi which found 50% complaints of rigging as correct as per Indian Exeprss Newspaper edition dated 26-11-89 page-1 column-1 attached to the instant election petition and marked as Annexure-8 to this petition. However, Election Commission failed to order repoll in the entire constituency of Amethi and ordered repoll in 97 booths only as such acted in partisan.

12. That counting was stopped several times as ballot boxes were found unsealed and ballot paper counter-foil unsigned by the Presiding Officer as per Annexure-9, annexed to this petition (election).

13. That Sultanpur DSP and DM were transferred as per Indian Express Newspaper dated 27-11-89 edition page-5 column-1 attached to this instant election petition and is marked as Annexure-10. Partial polling was allowed as per Annexure-11 to this (Election) petition.

14. That under the circumstances, it was expedient in the interest of justice, equity and fair-play that the election commission would have ordered repoll in the entire 25-Amethi Parliamentary Constituency. However, the election commission was under undue political pressure as such she acted illegally. Had Mr. Rajiv Gandhi or Election Commission confidence in the voters of Amethi Parliamentary Constituency, he could have gladly offered repoll there. Since there was wave against Mr. Rajiv Gandhi and they knew it as such Mr. Raju instead influenced unduly the election commission and the Government Servants to apply corrupt practices and partial polling."

In para 15 of the petition he has pleaded the cause of action and thereafter he has set out 4 grounds which may be reproduced as under :—

- "(i) Because the Election Commission has acted in partisan by not allowing free and fair poll in the 25-Amethi Parliamentary Constituency.
- (ii) Because blatant massive rigging was committed in the entire 25- Amethi Parliamentary Constituency, with the active consent

of the illegally returned candidate Mr. Rajiv Gandhi, by the entire Election Commission's machinery and her servants working on deputation.

- (iii) Because since the Parliament was not dissolved and the Ministry had not resigned the Election Commission was under political pressure of Mr. Rajiv Gandhi as such instead of conducting a free and fair poll she was throughout working as election agent of Rajiv Gandhi viz. the illegally returned candidate. Nay the whole Government machinery was serving in the interest of the returned candidate Mr. Rajiv Gandhi.
- (iv) Because more than the stipulated amount of Rs. 1.5 lacs were spent by the illegally returned candidate, Mr. Rajiv Gandhi."

He has annexed several documents in the election petition as Annexure nos. 1 to 11.

Learned counsel for the respondent no. 2 has contended that the petition does not contain a concise statement of material facts nor does it contain full particulars of any corrupt practice alleged in the petition and, therefore, the petition, which cannot be said to disclose a cause of action, is liable to be dismissed. To this the petitioner, who personally argued the case, replied by asserting that the petition contains all the requisite details and the case set out by him has to be decided on merits.

An analysis of the petition would indicate that the election of respondent no. 2 Sri Rajiv Gandhi to the Lok Sabha from 25-Amethi Parliamentary Constituency has been challenged on the grounds of corrupt practices alleged to have been committed during the course of the election as also on the ground that the Ministry had not resigned and the Parliament was not dissolved and further that respondent no. 2 was holding the office of the Union Government of India as the Prime Minister.

It may be stated that the result of the election was declared on 30-11-89 and respondent no. 2 was declared elected to the Lok Sabha from the Amethi Constituency. It is this election which has been questioned in the present petition.

The election of a returned candidate can be challenged under the provisions of the Representation of the People Act, 1951 (hereinafter referred to as the Act) on the ground set out in Section 100 which provides that if the High Court was of the opinion that on the date of his election, a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the Act or that the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent has committed any corrupt practice or that any nomination has been improperly rejected or that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of the nomination paper or by any corrupt practice committed in the interest of the returned candidate

by an agent other than his election agent or by any improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of the Constitution or of the Act or of any rule or order made under the Act, the High Court shall declare the election of the returned candidate to be void.

Section 123 of the Act sets out the various corrupt practices in sufficient details.

Section 83 of the Act provides as under :—

"83. An election petition

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings."

According to the provisions of Section 83, set out above, the election petition has to contain a concise statement of the material facts as also full particulars of any corrupt practice including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such corrupt practice.

The distinction between "concise statement of material facts" and "full particulars" has been noticed by the Supreme Court in a number of cases including *Samant N. Balakrishna Vs. George Fernandez and others* (A.I.R. 1969 S.C. 1201), *Manubhai Nandlal Amorsey Vs. Popat Lal Manilal Joshi* (A.I.R. 1969 S.C. 734), *Harish Chand Bajpai Vs. Triloki Singh* (A.I.R. 1957 S.C. 444), *Raj Narain Vs. Smt. Indira Nehru Gandhi and another* (A.I.R. 1972 S.C. 1302), *Udhav Singh Vs. Madhav Rao Scindia* (A.I.R. 1976 S.C. 744), *Daulat Ram Chauhan Vs. Anand Sharma* (A.I.R. 1984 S.C. 621), *Sultan Shahuiddin Owasi Vs. Mohd. Osman Shawced and others* (A.I.R. 1980 S.C. 1357), *Surinder Singh Vs. Hardial Singh and others* (A.I.R. 1985 S.C. 89), *Charan Lal Sahu Vs. Giani Zail Singh* (A.I.R. 1984 S.C. 309) and *Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi* (A.I.R. 1986 S.C. 1534).

In order to bring out the distinction between "concise statement of material facts" and "full particulars" and the consequences which flow from not setting out concise statement of material facts in an election petition, the observation of the Hon'ble Supreme Court in *Samant N. Balakrishna Vs. George Fernandez and others* (A.I.R. 1969 S.C. 1201) may be quoted below :—

"First, Section 83 of the Act is mandatory and requires first a concise statement of material

facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth, in stating the material facts, it will not do merely to quote the words of the section because then the efficiency of the material facts will be lost. The fact which constitutes a corrupt practice, must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

It will also be useful to quote a few words from the Supreme Court decision from Udhav Singh's case (A.I.R. 1976 S.C. 744) as under :—

"The distinction between 'material facts' and 'material particulars' is important because different consequences may follow from a deficiency of such facts or particulars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 Code of Civil Procedure. If the petition is based solely on these allegations which suffer from lack of material facts the petition is liable to be summarily rejected for want of a cause of action. (Emphasis supplied). 'All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are 'material facts'. In the context of a charge of corrupt practice 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged,' In short, all those facts, which are essential to clothe the petitioner with a complete cause of action, are 'material facts.'"

The Supreme Court decisions referred to above are all to the same effect. In Bhagwati Prasad

Dixit's case (A.I.R. 1986 S.C. 1534) the Hon'ble Supreme Court upheld the decisions of this Court which had dismissed the election petition at the preliminary stage as the material facts had not been set out and the allegations were vague.

It is in the light of the pronouncements of their lordships of the Supreme Court that the facts of the present petition are to be scrutinised and analysed to find out whether it complies with the requirement of Section 83(1) of the Act and sets out all the material facts of the corrupt practice which it seeks to plead so that there is a complete cause of action mentioned in the petition.

Taking up the question of respondent no. 2 not submitting resignation of his Cabinet at the time of election and the question of dissolution of Parliament, first, before considering other grounds, it may be pointed out that the Supreme Court in Bhagwati Prasad's case (A.I.R. 1986 S.C. 1534) has clearly laid down that the dissolution of the existing Lok Sabha was not a condition precedent for holding the General Elections. It further laid down that the Membership of either House of Parliament is not such an office of profit as would disqualify them from being chosen as a member of either House of Parliament. It was clearly laid down in that decision that the membership of Parliament is not an office under the Government. A Division Bench of this Court, of which I was a member, in Vijai Vikram Vs. Union of India and others : Writ Petition No. 9970 of 1989 decided on 8-11-89 has also held that the Parliament is not required to be dissolved before holding a general election.

The above decision of the Supreme Court in Bhagwati Prasad's case (supra) is a complete answer to the pleas raised by the petitioner that the election was held illegally as the Parliament was not dissolved or that the Ministry had not resigned.

The allegation made in para 3 of the petition that the "election was tainted with undue influence of the office of Prime Minister of India and was not a free and fair election" is an absolutely vague allegation which does not even set out the essential ingredients of the corrupt practice of "undue influence" as defined in Section 123(2) of the Act and leaves the whole case in the wilderness of guess work. In a situation of this nature the court will be well within its right to refuse to take up the futile exercise of the search of a Black Cat in a dark room where there was no cat.

In para 4 of the petition, it is stated that the election of respondent no. 2 was held illegally as during the period he was holding an office of the Union Government of India as Prime Minister and therefore the election was barred by Section 10 of the Act. Petitioner, it will be noticed does not say that respondent no. 2 was disqualified. What he says is that the election was barred by Section 10 of the Act.

Section 10 of the Act is wholly inapplicable as it disqualifies a person from seeking election to the Lok Sabha if he is a managing agent, manager or secretary of any company or corporation (other